IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Sales Tax Revision No. 71 of 2003

(Old No. 1164 of 1991)

Commissioner of Sales Tax
U.P. Lucknow. .....Applicant/ Revisionist

Vs.

The Bijnor Co-operative Sugar Factory,
Bajpur, Nainital ..... **Opposite Party**

Shri R.C. Arya, learned Standing Counsel for the revisionist.
Shri Piyush Garg, learned counsel for the opposite party.

Hon'ble Prafulla C. Pant, J.

Heard learned Standing Counsel and learned counsel for the respondent. The revision has been moved under Section 11 (1) of U.P. Sales Tax Act, 1948, and is directed against the judgment and order dated 17.05.1991, passed by Sales Tax Tribunal, Haldwani. This revision was filed way back in the year 1991 and is received by transfer from Allahabad High Court, under Section 35 of U.P. Reorganisation Act, 2000.

The assessment pertains to the year 1982-83, for which year the tax on sugar was an exempted item under Section 4 of U.P. Sales tax Act, 1948. The sugar is always sold in gunny bags as it is packed in gunny bags before it is stored for sale. The assessee is the manufacturer of sugar and was not supposed to sell it in loose without any packing.

Merely on the basis of the fact that the sugar was sold in gunny bags by the manufacturer, it cannot be said that the assessee has sold the gunny bags. There is nothing on the record to establish that there was any direct agreement between the assessee and the purchaser of sugar for sale of gunny bags for the specific amount as consideration. Since no price was paid for the

gunny bags, there cannot be said to the sale of gunny bags, as it does not come within the definition of sale, in view of Section 2 (h) of the U.P. Sales Tax Act, 1948. There is no question of liability of payment of interest on such tax.

In view of the above discussions, the revision has no force and the same is dismissed in limine.

(Prafulla C. Pant, J.)

Dt: 10.02.2006

H. Negi